(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.1086/2001

APPELLANT Madavi Soma, S/o Hidma Muria,
Aged about 55 years,
R/o Village Mudse,
P.S. – Katekalyan,
District Dantewada.

Versus

RESPONDENT State of Chhattisgarh, Through the Station House Officer, Police Station Katekalyan, District Dantewada.

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(03.10.2007)

L.C. Bhadoo, J:-

Ms. Nirupama Bajpai, Counsel for the appellant.

Ms. Anju Ahuja, Deputy Government Advocate for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 07.09.2001 passed by the First Additional Sessions Judge, Bastar at Jagdalpur in S.T. No.96/2001, whereby, the learned Additional Sessions

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

मामला क्रमांक G.A. – 1086/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Judge after holding the accused/appellant guilty of the offence punishable under Sections 302 and 201 of IPC for committing murder of his wife – Madvi Poje, sentenced him to undergo imprisonment for life and to pay a fine of Rs.300/-, in default of payment of fine to further undergo S.I. for 6 months, and R.I. for 3 years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 2 months. Both the sentences were directed to run concurrently.

Case of the prosecution in brief is that on 09.12.2000 at about 12:15 p.m. Madvi Somdi (PW-1) along with the villagers lodged the report (Ex.-P/1) in Police Station – Katekalyan to the effect that on Thursday, her husband – Deva and brother-in-law – Hidma after taking meal, left for the field at about 12' O Clock in the noon. She along with her mother-in-law -Madvi Poje (since deceased) and father-in-law – Madvi Soma (accused) was at the residence. At about 2 00 p.m., accused – Madvi Soma after consuming liquor, started quarrelling with his wife – Madvi Poje and attacked her with left leg, the accused/appellant was holding knife in his hand. When Madvi Somdi went to say something to accused/appellant, he tried to attack her also; therefore, she went to her father's house and stayed there in the night. In the morning, Lakhme came and informed Madvi Somdi that body of her mother-in-

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(21)

मामला क्रमांक GA - 1086/21 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

law is lying in the *Mundapond*, on which, she left with Lakhme to see the body in *Mundapond*, where she saw that the body of her mother-in-law was lying. There were injuries on both the eyes and left hand of the deceased; there was a ligature mark on the neck also. Baman and Sannu were asked to inform the Village Sarpanch-Patel, later on, he came and saw the body. Thereafter, the body was brought to the house, Panchayat was convened and she informed that her father-in-law after committing murder of her mother-in-law – Madvi Poje, threw her dead body in the pond. The SHO Police Station registered the merg intimation (Ex-P/2), site plan (Ex-P/4) was prepared by Halka Patwari. After giving notices (Ex-P/5) to the Panchas, inquest (Ex-P/6) was prepared on the body of the deceased – Madvi Poje. The accused/appellant gave memorandum under Ex.-P/7 and in pursuance of that, one knife was seized under Ex.-P/8, one shirt was seized under Ex-P/9 and one rope was seized under Ex.-P/10 . Site Plan (Ex.-P/12) was prepared by the Investigating Officer. Body of Madvi Poje was sent for postmortem examination to the Primary Health Centre, Katekalyan under Ex.P/13, where Dr. A.D. Bara (PW-6) conducted the postmortem and opined that the death was due to asphyxia. There was a ligature mark on the neck, which was anti-mortem and the death was homicidal in nature. He prepared postmortem report (Ex.-P/16).

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(22)

मामला क्रमांक G.A - 1086/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate , Dantewada, who in turn committed the case to the Sessions Judge, Jagdalpur, from where, learned First Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against accused/appellant examined 10 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

The learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned.

We have heard Ms. Nirupama Bajpayee, Counsel for the appellant and Ms. Anju Ahuja, Deputy Government Advocate for the State.

Ms. Bajpayee argued that in this case there is no direct or ocular evidence. The accused/appellant has been convicted merely on the basis of last seen with the deceased and recovery of the rope, knife at his instance, whereas, all the witnesses have turned hostile. He has been convicted without any legal evidence on record.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक CRA-1086/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, learned counsel for the State supported the judgment of the trial Court.

PW-1 – Madvi Somdi is the witness regarding last seen, who is the daughter-in-law of the deceased. She has not supported the prosecution case and has been declared hostile. She simply stated that on the fateful day, her father-in-law and mother-in-law were at the residence. Her father-in-law had not attacked her mother-in-law. On cross-examination by the Assistant Public Prosecutor, she stated that on the day of incident, in the noon, she alongwith her father-in-law and mother-in-law was at the residence. She has stated that it is incorrect to say that her father-in-law gave beating to her mother-in-law after consuming liquor. When accused/appellant quarrelled with her (Madvi Somdi), she went to her father's house and thereafter, she did not see anything. From her evidence, it is established that when she left the house, her father-in-law and mother-in-law were at the residence. Madvi Somdi did not return in the night and on the next day, Lakhme came and informed her that body of her mother-in-law- Madvi Poje was seen lying in the village pond, on which, she went to the pond and saw the body of her mother-in-law. Lakhme has not been examined. There is no evidence on record to show as to who put the body in the pond. Apart from this evidence, case of the prosecution is that the knife and rope

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A - 1086/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

were recovered at the instance of the accused/appellant. PW-2 has turned hostile.

PW-3 – Subarnath, who is the witness to the memorandum and recovery of the knife, rope, has stated in the cross-examination that the police persons called him in the police station and obtained his signature. The seizure was made in the police station and there only, rope and knife were shown to him. It is correct that the recovery was not made from the accused/appellant or at his instance in his presence. Another witness i.e. PW-8 Muchaki Hidme has turned hostile. She has stated that it is incorrect to say that the accused used to quarrel and beat the deceased after consuming liquor. She denied that the memorandum was prepared in her presence. Therefore, both the independent witnesses regarding memorandum and recovery of knife, rope have turned hostile.

PW-10 – Kosa has also turned hostile and has stated that no information was given in his presence by the accused/appellant regarding knife, rope and no recovery was effected. Moreover, there is no evidence that the rope in question was used for strangulation of the deceased.

Therefore, for the foregoing reasons, we are of the considered opinion that the prosecution has utterly failed to establish the crime against the accused/appellant, as there

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(25)

मामला क्रमांक CA - 1086/01 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश २	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

is no legal evidence, by which, it can be held that the accused was the author of the crime in question.

In view of the above, the conviction and sentence imposed upon the accused/appellant under Sections 302 and 201 of the IPC are set aside. He is acquitted of the said charge. It is stated that the accused/appellant is in detention since 10.12.2000, therefore, he be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Sunil Kumar Sinha
Judge

Shyna